

**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**

California Rules of Court, rule 8.1115(a), prohibits courts and parties from citing or relying on opinions not certified for publication or ordered published, except as specified by rule 8.1115(b). This opinion has not been certified for publication or ordered published for purposes of rule 8.1115.

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION FIVE

In re K.B., a Person Coming Under the  
Juvenile Court Law.

B260467  
(Los Angeles County  
Super. Ct. No. CK92881)

LOS ANGELES COUNTY  
DEPARTMENT OF CHILDREN AND  
FAMILY SERVICES,

Plaintiff and Respondent,

v.

M.J. et al.,

Defendants and Appellants.

APPEAL from orders of the Superior Court of the County of Los Angeles,  
Marguerite Downing, Judge. Conditionally reversed and remanded with directions.

Law Office of Marissa Coffey, Marissa Coffey, under appointment by the Court of  
Appeal, for Defendant and Appellant M.J.

Lori Siegel, under appointment by the Court of Appeal, for Defendant and  
Appellant A.J.

Mark J. Saladino, County Counsel, Dawyn R. Harrison, Assistant County Counsel,  
Kimberly Roura, Deputy County Counsel for Plaintiff and Respondent.

## INTRODUCTION

M.J. (mother) appeals from the juvenile court's order terminating her parental rights regarding K.B. and H.J.<sup>1</sup> under Welfare and Institutions Code section 366.26.<sup>2</sup> A.J. (H.J.'s father) appeals from the juvenile court's order terminating his parental rights regarding H.J. Mother and H.J.'s father contend that the juvenile court erred in finding that the Indian Child Welfare Act (ICWA) (25 U.S.C. § 1901, et seq.) did not apply. Because the Department did not comply with the ICWA's inquiry requirements and notice provisions, we conditionally reverse the order terminating the parental rights of mother to K.B. and H.J., and the order terminating the parental rights of H.J.'s father to H.J., and remand this case with directions to the juvenile court to ensure full compliance with the ICWA.

## FACTUAL AND PROCEDURAL BACKGROUND<sup>3</sup>

In March 2012, the family came to the attention of plaintiff and respondent Los Angeles County Department of Children and Family Services (Department). Four-year-old K.B. and four-month-old H.J. were detained. The Department interviewed mother and H.J.'s father. H.J.'s father stated that he had Indian ancestry on his father's side through the Creek Nation of Oklahoma. He said his uncle was in the process of completing his tribal registration. Mother said that her family also had Indian ancestry,

---

<sup>1</sup> Mother's older son, M.M., is not a party to the appeal. M.M. also was a dependent in this dependency case but on April 9, 2013, jurisdiction was terminated as to him.

<sup>2</sup> All statutory references are to the Welfare and Institutions Code, unless otherwise indicated.

<sup>3</sup> Because the only claim on appeal by mother and H.J.'s father is that the juvenile court erred in the application of the ICWA, we limit our statement of the Factual and Procedural Background to that issue.

but she could not identify a specific tribe. Mother reported that K.B.'s father was K.Q., but his whereabouts were unknown.

On April 4, 2012, the Department filed a section 300 petition on behalf of K.B. and H.J. pursuant to subdivisions (a), (b) and (j). The petition provided that both K.B. and H.J. may have Indian ancestry. The Department's April 4, 2013, detention report stated that the ICWA "does or may apply." It states that H.J. may have Indian heritage through the Creek Nation of Oklahoma, and the tribe for which K.B. may have Indian heritage was unknown.

H.J.'s father filed a parental notification of Indian status on which he indicated he may have Indian ancestry through the Creek Nation in Oklahoma City. At the April 4, 2012, detention hearing, the juvenile court noted that H.J.'s father indicated that he may have Indian ancestry through the Creek Nation and ordered the Department to provide notice under the ICWA to the Creek Nation, the federal Bureau of Indian Affairs (BIA), and the Secretary of the Interior. In April 2012, a social worker made several attempts to meet with H.J.'s father to assess his home and to investigate for the ICWA notices, but was not successful. On April 26, 2012, the juvenile court found H.J.'s father to be H.J.'s presumed father.

In April 2012, the juvenile court found K.Q. to be K.B.'s alleged father. The juvenile court asked mother whether K.Q. had any Indian ancestry, and mother stated that she did not know. The juvenile court found it had no reason to know that the ICWA applied as to K.Q.

On April 26, 2012, mother filed a parental notification of Indian status which stated "I may have Indian ancestry," but mother did not know the name of the tribe. Mother wrote, "Please contact maternal great uncle [G.C.], Jr.," and provided a telephone number.

At the April 26, 2012, arraignment hearing, the juvenile court acknowledged that mother had indicated on the parental notification of Indian status form that she might have Indian ancestry and had provided a telephone number, and noted mother had not identified a tribe. The juvenile court stated, "She has provided a phone number, so the

Department can follow up.” The minute order of the hearing states that the juvenile court ordered the Department “TO INVESTIGATE ICWA ISSUES AS TO MOTHER AND NOTICE THE APPROPRIATE TRIBES AND AGENCIES WHEN A TRIBE IS IDENTIFIED.”

On May 16, 2012, the Department filed a last minute information for the court report stating that mother said H.J.’s father “[m]ight be Indian. I think he mentioned it a long time ago but really I don’t know for sure, you have to talk to him about Indian Heritage. I don’t have Indian Heritage in me but my great great grandmother might be, but it’s not in me.” On that same day, the juvenile court ordered the Department to submit the ICWA notices, return receipts, and responses from the tribes, and to address further attempts to interview H.J.’s father.

On September 10, 2012, the Department sent an ICWA notice for K.B. stating that the Indian tribe was unknown; the notice was sent to the BIA. The notice included mother’s name, address, several former addresses, and birth date. It provided the first and last name of mother’s father, one of mother’s grandmothers, and one of mother’s grandfathers, and the last name of mother’s other grandfather.

The ICWA notice for K.B., however, listed mother’s birth place as unknown. It did not list mother’s middle initial or maiden name.<sup>4</sup> It listed as unknown the name of mother’s mother and her date of birth, and the current and former addresses for the mother’s parents. The current and former addresses for the mother’s grandparents, and if deceased, the date and place of death, were marked as unknown.

The Department also sent an ICWA notice for H.J. to Village of Crooked Creek, Dry Creek Rancheria Support, Poarch Band of Creek Indians, Portage Creek Village, The Muscogee Creek Nation, Birch Creek Tribe, Cow Creek Band of Umpqua Tribe of Indians, Cow Creek Sioux Tribe Lakota, Berry Creek Rancheria, Birch Creek Tribe, and the BIA. The notice for H.J. included the information described above regarding the notice for K.B. as to mother and her relatives. The ICWA notice for H.J. included the

---

<sup>4</sup> This information was listed on the birth certificates for K.B. and H.J.

name of H.J.'s father and his address. It also included the name of the parents of H.J.'s father, the names of the grandparents for H.J.'s father, and the date of birth of the mother of H.J.'s father.

The notice for H.J., however, listed as unknown essentially the same information listed as unknown in the notice for K.B. (described above) relating to mother and her relatives. The notice for H.J. listed the same date of birth for H.J.'s father, June 16, 1946,<sup>5</sup> as was listed for the father of H.J.'s father (i.e., the paternal grandfather). It also listed as unknown the place of birth of H.J.'s father, the current and former address for the paternal grandparents, and the current and former address for the paternal great grandparents, their birth dates, and places of birth.

At the August 20, 2012, adjudication hearing, the juvenile court sustained the section 300 petition. The juvenile court ordered K.B. removed from mother's custody, H.J. removed from the custody of mother and H.J.'s father, and reunification services be provided for mother and H.J.'s father.

The Department reported that it received signed receipts for the notices from the Indian tribes. The Department received responses to the notices from three Indian tribes—the Crooked Creek Traditional Council, the Poarch Band of Creek Indians, and the Cow Creek Band of Umpqua Tribe of Indians—stating that H.J. did not have Indian ancestry through them. The Department also received responses from the BIA stating that neither H.J. nor K.B. had Indian ancestry. On November 16, 2012, the juvenile court found that the ICWA did not apply, stating: “The court finds the court has no reason to know the Indian Children Welfare Act applies; finds that these are not Indian children.”

The juvenile court terminated mother's family reunification services, but extended services to H.J.'s father. Thereafter, K.B. was placed with H.J. in foster parent N.E.'s home, and the juvenile court terminated H.J.'s father's family reunification services with H.J.

---

<sup>5</sup> Both mother's April 12, 2012, parentage questionnaire and the Department's subsequent October 16, 2012, interim review report list the date of birth for H.J.'s father as February 20, 1968.

In April 2014, the Department reported that N.E., the foster parent for K.B. and H.J., passed away in March. The children remained in the same home with N.E.'s adult daughter, R.J., who had been residing with the family and caring for the children. R.J. was committed to adopting the children, and on June 4, 2014, R.J.'s adoptive home study was approved.

On June 26, 2014, mother filed separate section 388 petitions for the children seeking to have visits with them at her place of incarceration. In mother's H.J. petition, on the line in the form requesting information of the child's Indian tribe, mother wrote: "Cheynne (Pronounced Shy-Ann)" and wrote "spelling?" above it. In mother's K.B. petition, mother left blank the line requesting information of the child's Indian tribe, and checked the boxes for "Not Applicable" on the lines for whether an "Indian tribe" or "Indian custodian" agreed with the petition.<sup>6</sup>

The juvenile court granted mother's section 388 petitions and ordered the Department to investigate the possibility of visitation options for mother and the children during mother's incarceration, and of the relatives facilitating the visits. The juvenile court did not order any investigation into mother's claim of Cheyenne Indian heritage for H.J. The Department submitted a declaration of due diligence reporting its unsuccessful efforts to locate K.Q.

At the November 10, 2014, contested section 366.26 hearing, the juvenile court found K.B. and H.J. were adoptable and no exceptions to adoption applied. The juvenile court terminated the parental rights of H.J.'s father and mother as to H.J., and the parental rights of mother and K.Q. as to K.B. Mother and H.J.'s father filed timely notices of appeal.

## **DISCUSSION**

"In 1978, Congress passed the Act, which is designed to promote the stability and security of Indian tribes and families by establishing minimum standards for removal of

---

<sup>6</sup> Mother entered the same information in her M.M. petition.

Indian children from their families and placement of such children ‘in foster or adoptive homes which will reflect the unique values of Indian culture, and by providing for assistance to Indian tribes in the operation of child and family service programs.’” (*In re Marinna J.* (2001) 90 Cal.App.4th 731, 734, quoting 25 U.S.C. § 1902.) Section 224.3, subdivision (a)<sup>7</sup> imposes upon the juvenile court and the Department a continuing duty to inquire if a child in dependency proceedings has or may have Native American ancestry.

The ICWA “sets forth the manner in which a tribe may obtain jurisdiction over proceedings involving the custody of an Indian child, and the manner in which a tribe may intervene in state court proceedings involving child custody. When the dependency court has reason to believe a child is an Indian child within the meaning of the Act, notice on a prescribed form must be given to the proper tribe or to the [BIA], and the notice must be sent by registered mail, return receipt requested. [Citations.]” (*In re Elizabeth W.* (2004) 120 Cal.App.4th 900, 906; *In re Shane G.* (2008) 166 Cal.App.4th 1532, 1538.

““[T]he [ICWA] notice requirements serve the interests of the Indian tribes ‘irrespective of the position of the parents’ and cannot be waived by the parent. [Citation.]” [Citation.]’ [Citations.]” (*In re S.B.* (2005) 130 Cal.App.4th 1148, 1159.) The tribe determines a child’s Indian status and therefore a mere suggestion of Indian ancestry compels the issuance of an ICWA notice. (*In re Nikki R.* (2003) 106 Cal.App.4th 844, 848.) “Synonyms for the term *suggest* include ‘imply,’ ‘hint,’ ‘intimate’ and ‘insinuate.’ [Citations.]” (*Dwayne P. v. Superior Court* (2002) 103 Cal.App.4th 247, 258.) “[T]he bar is indeed very low to trigger ICWA notice.’ [Citation.]” (*In re Gabriel G.* (2012) 206 Cal.App.4th 1160, 1165; *In re Antoinette S.* (2002) 104 Cal.App.4th 1401, 1406, 1408 [a suggestion that child “might” be an Indian child because paternal great-grandparents had unspecified Native American ancestry was enough to require the issuance of an ICWA notice]; *Dwayne P. v. Superior Court, supra*,

---

<sup>7</sup> Section 224.3, subdivision (a) provides, “The court, county welfare department, and the probation department have an affirmative and continuing duty to inquire whether a child for whom a petition under Section 300, 601, or 602 is to be, or has been, filed is or may be an Indian child in all dependency proceedings and in any juvenile wardship proceedings if the child is at risk of entering foster care or is in foster care.”

103 Cal.App.4th at pp. 256, 258 [the showing required to trigger notice under the ICWA is evidence suggesting that the minor may be an Indian child].) ICWA notice is required even if the child's possible Indian heritage is revealed late in the juvenile court proceedings. (*In re Jonathan D.* (2001) 92 Cal.App.4th 105, 111.)

As noted above, the juvenile court and the Department have an affirmative and continuing duty to inquire whether a child is or may be an Indian child. (Cal. Rules of Court, rule 5.481(a); *In re S.B.*, *supra*, 130 Cal.App.4th at p. 1158.) They did not comply with the ICWA's inquiry requirements.

H.J.'s father said to the Department that he had Indian ancestry on his father's side through the Creek Nation of Oklahoma, and his uncle was in the process of completing his tribal registration. There is no evidence in the record, however, that the Department interviewed the uncle of H.J.'s father to confirm that Indian ancestry of H.J.'s father was actually through the "Creek Nation of Oklahoma," or to otherwise follow-up on the statement made by H.J.'s father. The ICWA notice for H.J. was not sent to a tribe specifically called the "Creek Nation of Oklahoma," presumably because a tribe with that exact name did not exist.

Although mother could not identify a specific tribe, she told the Department that she had Indian ancestry. Mother thereafter filed a parental notification of Indian status providing the name and telephone number for the maternal great uncle, and mother requested that the Department check with him to follow up on her statement that she may have Indian ancestry. The juvenile court acknowledged mother's parental notification of Indian status and said that because mother provided the name and telephone number for the maternal great uncle, the Department should "follow up." The juvenile court also ordered the Department to investigate the ICWA issues as to mother. There is no evidence in the record, however, that the Department interviewed the maternal great uncle.

Citing *In re Z.N.* (2009) 181 Cal.App.4th 282, at page 298, the Department contends that mother's belief that relatives had Indian ancestry does not trigger a duty to notify the tribes. That case, however, does not address the issue of the affirmative and



continuing duty of the juvenile court and the Department to inquire about the Indian heritage. (Cal. Rules of Court, rule 5.481(a); *In re S.B.*, *supra*, 130 Cal.App.4th at p. 1158.) That duty to inquire was recognized by the juvenile court when, as noted above, it ordered the Department to “follow up” with the maternal great uncle about mother’s claim of Indian heritage.

Mother said, “I don’t have Indian Heritage in me but my great great grandmother might be, but it’s not in me.” This statement is ambiguous because presumably, if mother’s great great grandmother has Indian ancestry, so does mother.

Mother also stated in a section 388 petition regarding H.J. seeking to have visits with her at mother’s place of incarceration that H.J.’s Indian tribe was “Cheynne (Pronounced Shy-Ann)” (i.e., not the ancestry claim of H.J.’s father through the Creek Nation of Oklahoma). Although the juvenile court granted the petition and ordered the Department to investigate the possibility of visitation options for mother, it did not order any investigation into mother’s claim of Cheyenne Indian heritage for H.J.

The Department contends that mother “simply made a mistake in reporting the wrong tribe” by reporting that H.J. had Cheyenne Indian ancestry because H.J.’s father stated that he had Indian heritage through the Creek Nation of Oklahoma. The Department notes that H.J.’s father is not the father of K.B. and M.M., and mother did not state in the section 388 petitions regarding K.B. and M.M. that they had Indian ancestry. The Department asserts that mother should have stated in the petition for H.J. that H.J.’s tribe was the Creek Nation of Oklahoma, as claimed by H.J.’s father. Nevertheless, mother’s claim warranted investigation into whether H.J. had Cheyenne Indian heritage.

The ICWA notices for K.B. and H.J. were also inadequate. “ICWA notice requirements are strictly construed. [Citation.] The notice sent to the BIA and/or Indian tribes must contain enough information to be meaningful. [Citation.] The notice must include: if known . . . names and addresses of the child’s parents, grandparents, great grandparents, and other identifying information . . . . [Citation.] [¶] It is essential to provide the Indian tribe with all available information about the child’s ancestors,

especially the ones with the alleged Indian heritage. [Citation.] Notice to the tribe must include available information about the maternal and paternal grandparents and great-grandparents, including maiden, married and former names or aliases; birthdates; place of birth and death; current and former addresses; tribal enrollment numbers; and other identifying data. [Citation.]” (*In re Francisco W.* (2006) 139 Cal.App.4th 695, 703.)

Citing *Nicole K. v. Superior Court* (2007) 146 Cal.App.4th 779 at page 784, the Department argues that errors in a family member’s information on ICWA notice are harmless if that family member does not claim a connection to “the” tribe. Based thereon, the Department contends that because mother did not claim a connection to the “Creek tribes,” any error as to the maternal information listed on the IQWA notices was harmless. The Department mischaracterizes *Nicole K. v. Superior Court, supra*, 146 Cal.App.4th 779. The court in that case said that it was harmless error that her birth year was erroneously listed in the ICWA notices because she did not claim to have a connection to “any” tribe. Here, mother contended that she had Indian heritage, but the tribe was unknown. The ICWA notices were sent to the BIA.

The ICWA notice for both K.B. and H.J. listed mother’s birth place as unknown. It did not list mother’s middle initial or maiden name, although this information was provided on the birth certificates for K.B. and H.J. It listed as unknown the name of mother’s mother and the current and former addresses for the mother’s parents. The maternal grandmother’s name and date of birth were marked unknown. The current and former addresses for the mother’s maternal grandparents, and if deceased, the date and place of death were marked as unknown.

As noted above, H.J.’s father said to the Department that he had Indian ancestry on his father’s side. Much of the information in H.J.’s notice regarding H.J.’s father’s paternal side of the family, however, was inaccurate or incomplete. H.J.’s notice listed the same date of birth for H.J.’s father, June 16, 1946, as was listed for the father of H.J.’s father (i.e., the paternal grandfather). Mother, however, previously reported that the date of birth for H.J.’s father is February 20, 1968. In addition, H.J.’s ICWA notice also listed the place of birth of H.J.’s father as unknown, did not list the place of birth of

the father of H.J.'s father, and listed the current and former address for the parents of H.J.'s father as unknown. Although the notice listed the names of the grandparents for H.J.'s father, it listed as unknown their current and former address, and their birth date and place of birth.

The inaccurate information and the information omitted in the ICWA notices make them inadequate, particularly because some of the information was known to the Department. In addition, there is no evidence in the record that mother and H.J.'s father were interviewed to provide this information to the Department. Presumably, mother and H.J.'s father knew some of the omitted information. Finally, mother claimed that H.J.'s Indian tribe was Cheyenne. H.J.'s ICWA notice, however, was not sent to the Cheyenne tribes. Because we cannot rule out that the children may be Indian under the ICWA, the errors are not harmless.

## **DISPOSITION**

The order terminating mother's parental rights to K.B. and H.J., and the order terminating father's parental rights to H.J., are conditionally reversed. The matter is remanded to the juvenile court for the limited purpose of ensuring the Department's compliance with the ICWA. If after such compliance, the juvenile court determines that the children do not have Indian heritage, then the juvenile court shall reinstate the orders terminating the parental rights of mother's and H.J.'s father and may proceed accordingly. If the children do have Indian heritage, the Department shall proceed in accordance with the requirements of the ICWA.

NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS

MOSK, Acting P. J.

We concur:

KRIEGLER, J.

KIRSCHNER, J.\*

---

\* Judge of the Los Angeles Superior Court, assigned by the Chief Justice pursuant to article VI, section 6 of the California Constitution.